Supreme Court, U.S.
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No. 91-303

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

OSCAR W. JACKSON, CLAYBORNE TAITE, JR., GEORGE BRU, ALBERT WALTON, as Union Trustees of the MSSA-ILA PENSION PLAN AND TRUST,

Petitioners,

vs.

HARRY SMITH, Defendant

ARTHUR W. STRATTON, HARTWELL LUDLOW, NED MATTINGLY, as Employer Trustees of the MSSA-ILA PENSION PLAN AND TRUST,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Question Presented

Did the Court of Appeals correctly analyze the facts and the explicit terms of the subject Pension Plan upon application of Section 302(c)(5)(B) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5)(B), to determine that the Union Trustees' motion to increase the level of benefits was not an arbitrable matter and that the facts of this case were distinguishable from the facts underlying decisions of other Circuits upholding arbitration?

Parties

The parties to this case are:

A. Petitioners:

Oscar W. Jackson, Clayborne Taite, Jr., George Bru, and Albert Walton, Jr., as Union Trustees of the MSSA-ILA Pension Plan and Trust[1].

B. Respondents:

Harry Smith[2], Arthur W. Stratton, Hartwell Ludlow and Ned Mattingly, as Employer Trustees of the MSSA-ILA Pension Plan and Trust[3].

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[1]Oscar W. Jackson and Clayborne Taite, Jr. are affiliated with International Longshoremen's Association, Local 1410, George Bru is affiliated with International Longshoremen's Association, Local 1459 and Albert Walton, Jr. is affiliated with International Longshoremen's Association, Local 1410-1.

[2]Harry Smith resigned as Employer Trustee subsequent to the filing of the appeal to the Eleventh Circuit and is no longer a party to this action nor is he affiliated in any way with any of the parties.

[3]Arthur W. Stratton is affiliated with Ryan-Walsh, Inc., Hartwell Ludlow is affiliated with Page and Jones, Inc., and Ned Mattingly is affiliated with Strachan Shipping Company.

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Opinions Below

The opinion of the Court of Appeals, which is reported at 927 F.2d 544 (11th Cir. 1991), is reproduced as Appendix A (App. A at 1a-10a) to the Union Trustees' Petition for a Writ of Certiorari. The Court of Appeals' order denying the Union Trustees' Petition for Rehearing and Suggestion for Rehearing En Banc is reported at 935 F.2d 1297 (11th Cir. 1990) and is reproduced as Appendix C (App. C at 17a-18a) to the Union Trustees' Petition for a Writ of Certiorari. The June 8, 1990 judgment and order of the District Court are reproduced as Appendix B (App. B at 11a-16a) to the Union Trustees' Petition for a Writ of Certiorari.

Jurisdiction

The Petition for a Writ of Certiorari was filed by the Union Trustees within ninety (90) days of the date the Court of Appeals denied the Union Trustees' Petition for Rehearing and Suggestion of Rehearing En

Banc. The Union Trustees invoke the jurisdiction of this Court under 29 U.S.C. 1254(l).

Statutes

Some of the statutes involved are set out in the Union Trustees' Petition for a Writ of Certiorari at pages 2-7. In addition to those statutes, the case involves the following statute:

> Section 402(b)(3) of ERISA, 29 U.S.C. § 1102(b)(3):
>
> "402 [§ 1102]. Establishment of plan.
> . . .
>
> (b)(3) Every employee benefit plan shall provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, ..."

Statement of the Case

The MSSA-ILA Pension Plan and Trust (the "Plan") is an "employee pension benefit plan" within the meaning of Section 3(2)(A) of ERISA, 29 U.S.C. § 1002(2)(A), and also a "multiemployer plan" within

the meaning of Sections 3(37)(A) and 4001(3) of ERISA, 29 U.S.C. §§ 1102(37)(A) and 1301(3). The Plan was established in 1956 pursuant to a collective bargaining agreement between certain affiliated local unions of the International Longshoremen's Association, the Mobile Steamship Association, on behalf of its member employers, and certain independent employers. The purpose of the Plan, as stated therein at Article One, Section 1.1, "is to provide retirement benefits for Employees who are eligible therefor in accordance with the terms and conditions hereof."

Pursuant to the terms of the Plan, its Board of Trustees is composed of four trustees appointed by the ILA local unions, and four trustees appointed by the Mobile Steamship Association. Article Eleven, Section 11.01. The Plan specifically provides that "at all meetings the [trustees] shall have equal voting strength." Article Eleven, Section 11.05(a). "Except as otherwise provided" in the Plan, "any action taken by the Trustees . . . shall be by a majority vote of the Trustees." Article Eleven, Section 11.05(b). One action that may be taken

by the Trustees, but for which different voting and other requirements are provided in the Plan, is amendment of the Plan. Amendments to the Plan can only be made by "the vote of seventy-five percent (75%) of all Trustees provided for at the time under [the] Trust Agreement." Article Fourteen, Section 14.01(a). Additionally, amendments to the Plan are required to be submitted to the Commissioner of Internal Revenue for approval and must be made, if necessary, to conform the Plan to the provisions of the collective bargaining agreement pursuant to which the Plan is established and maintained. Id.

On February 23, 1989, during a meeting of the Board of Trustees of the Plan, a motion was made by Mr. Seymour Irby, Jr., a Union Trustee, "for an across-the-board increase of ten percent (10%) to all persons receiving pension benefits from the [Plan]." This motion was seconded by Mr. Henry Clarke, likewise a Union Trustee. The amount of the monthly benefits paid under the Plan are expressly set out in the Plan by Article Six, Section 6.01. The Plan also provides that,

although the Trustees may, upon a determination that the financial situation of the Plan will allow it, increase or decrease the monthly pension benefits, such an adjustment must be made through an amendment to the Plan. Article Six, Section 6.05.

A roll call vote of the Board of Trustees on the motion by Mr. Irby to increase pension benefits (the "Requested Pension Increase") resulted in all of the Union Trustees voting in favor of the motion and all of the Employer Trustees voting against the motion. Accordingly, the motion failed to pass. The Union Trustees asserted that the motion failed to pass because of a tie vote, and therefore invoked the "deadlock" provision of the Plan. That provision states that "[i]n the event the Trustees cannot decide any matter or resolve any dispute because of a tie vote, the Trustees will by unanimous vote select such impartial arbitrator . . . to decide the issue." Article Eleven, Section 11.06. The Employer Trustees ultimately rejected the position of the Union Trustees, and refused to submit the Requested Pension Increase to arbitration. The basis

for the Employer Trustees' refusal to submit this issue to arbitration was that any change in the monthly pension benefits must be accomplished through an amendment to the Plan, which can only be made by a seventy-five percent (75%) vote of the Board of Trustees, and therefore the motion did not fail to pass "because of a tie vote.".

On June 9, 1989, the Union Trustees filed their complaint in this action in the United States District Court for the Southern District of Alabama seeking, among other things, a declaration that the Requested Pension Increase was subject to arbitration under the terms of the Plan, and an order that the Employer Trustees submit this issue to arbitration. The parties filed cross motions for summary judgment. The District Court concluded that the Requested Pension Increase was an arbitrable matter, and directed that the issue be submitted to arbitration.

The Employer Trustees appealed the District Court's decision to the United States Court of Appeals

for the Eleventh Circuit. The Eleventh Circuit reversed the District Court's decision to the extent that it concluded that the Requested Pension Increase was an arbitrable matter. The Eleventh Circuit held that, based on the facts involved and the terms of the Plan, the Requested Pension Increase was not an issue for which arbitration was mandated under the law or the terms of the Plan.

The Union Trustees now petition this Court for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, claiming that the decision by the Eleventh Circuit conflicts with decisions of other circuits that have addressed the same issue and is contrary to applicable law.

Summary of Reasons for Denying the Writ

The Petition should be denied because the Union Trustees seek a review of the interpretation by the United States Court of Appeals for the Eleventh Circuit of the terms of the Plan and the application of the

law to the particular facts and circumstances involved in this case. In its opinion, the Eleventh Circuit plainly distinguished its holding from the decisions of other circuits with which the Union Trustees claim it is in conflict. Moreover, the petition should be denied because the Eleventh Circuit correctly concluded that under the terms of the Plan and applicable law, the Requested Pension Increase was not a matter that was subject to the arbitration procedure of the Plan.

Reasons for Denying Writ

The Union Trustees Seek Review of the Contractual Interpretation of the Eleventh Circuit and the Application of the Provisions of the Plan, as Interpreted, to the Facts and Circumstances of this Action.

The Union Trustees have attempted to force the Employer Trustees to submit the Requested Pension Increase to arbitration, but this is an issue which the Employer Trustees have consistently considered to be non-arbitrable. In order to decide the issue, both the District and Circuit Courts were required to address

the relevant terms of the Plan and to interpret those terms in light of the facts and circumstances involved. The District Court held that Article Eleven, Section 11.06 of the Plan was the controlling provision of the Plan on the issue of whether the Requested Pension Increase was an arbitrable matter. Accordingly, faced with a tie vote of the Board of Trustees on this issue, the District Court ordered the Employer Trustees to submit this issue to arbitration.

The Eleventh Circuit gave a different interpretation of the terms of the Plan. It noted that Article Eleven, Section 11.06 of the Plan must not be read in isolation. Jackson v. Smith, 927 F.2d at 549-50, (App. to Petition at A-9a). Rather, basic principles of contract construction, which were applicable in this case, required that the Plan be interpreted so as to give "meaning and effect to every Section." Id. Using this tenet of contract interpretation as a starting point, the Eleventh Circuit examined the relevant provisions of the Plan.

The Eleventh Circuit recognized, as did the District Court, that Article Eleven, Section 11.06 of the Plan required the Board of Trustees to submit to arbitration any issue that could not be decided "because of a tie vote." Id. But the Eleventh Circuit carried its analysis of the Plan provisions further, noting that the Plan expressly provided, in Article Six, Section 6.05, that the Requested Pension Increase was an issue requiring an amendment to the Plan itself in order for any such increase to become effective. Under Article Fourteen, Section 14.01 of the Plan, amendments to the Plan, as opposed to other matters which may come before the Board of Trustees, required a seventy-five percent (75%) affirmative vote of the Board of Trustees.

Upon consideration of the relevant provisions of the Plan, the Eleventh Circuit held that the position of the Union Trustees, and the decision by the District Court, gave no meaning or effect to any provision of the Plan except Article Eleven, Section 11.06. Id. Applying the proper standards of contract construction

in light of the facts involved in this case, the Court held that the arbitration provision of the Plan did not apply to the Requested Pension Increase.

Very simply, the Eleventh Circuit applied long-standing and well recognized concepts of contract interpretation to the terms of the Plan. What the Union Trustees seek to have this Court review is the interpretation and construction given the Plan by the Eleventh Circuit, and the Eleventh Circuit's application of the Plan, as interpreted and construed, to the facts and circumstances involved herein. Questions of contract interpretation such as presented here plainly do not merit review by this Court.

The Provision of the Plan Requiring a Seventy-Five Percent Affirmative Vote of the Board of Trustees to Amend the Plan does not Violate Section 302(c)(5)(B) of the Labor Management Relations Act, 29 U.S.C. § 186(c)(5)(B).

The Union Trustees claim that Article Fourteen, Section 14.01 of the Plan violates Section 302(c)(5)(B).

Section 302(c)(5)(B) provides that where an employee benefit plan such as the one involved in this action is established, "employees and employers [must be] equally represented in the administration of [the plan]." As noted above, Article Fourteen, Section 14.01 of the Plan provides that amendments to the Plan must be approved by seventy-five percent (75%) of the Board of Trustees.[4]

Article Eleven, Section 11.01 of the Plan states that the Board of Trustees of the Plan "shall be eight in number, four of whom shall be appointed annually by the association. Article Eleven, Section 11.05(a) of the Plan provides that "at all meetings the Employer Trustees and the Union Trustees shall have equal voting strength." This is all that is required by the "equal representation" portion of Section 302(c)(5)(B), and no

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[4]Section 402(b)(3) of ERISA, 29 U.S.C. § 1102(b)(3), requires that every plan "provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan." The Plan complies with these requirements of ERISA by providing that the Board of Trustees may amend the Plan by a seventy-five percent vote. However, the parties who established the Plan pursuant to the collective bargaining agreement between them could have reserved the right to amend the Plan in their sole discretion, or to approve any amendment to the Plan made by the Board of Trustees.

court has held otherwise. In short, the claim by the Union Trustees that Article Fourteen, Section 14.01 violates the equal representation requirement of Section 302(c)(5)(B) is a red herring, and is not an issue this Court should exercise its jurisdiction to address.

There is No Conflict Between the Decision of the Eleventh Circuit and Decisions of Other Circuits.

The Union Trustees claim the decision by the Eleventh Circuit that Section 302(c)(5)(B) does not mandate arbitration of the Requested Pension Increase conflicts with decisions of other circuits. Specifically, the Union Trustees claim that the decision of the Eleventh circuit conflicts with the decisions in Geigle v. Flacke, 768 F.2d 259 (8th Cir. 1985); Hauskins v. Stratton, 721 F.2d 535 (5th Cir. 1983); and Hawkins v. Bennett, 704 F.2d 1157 (9th Cir. 1983).

The Eleventh Circuit's decision does not conflict with the cases cited by the Union Trustees. To the contrary, the Eleventh Circuit recognized the decisions

in these cases, and applied the standards enunciated by the courts in those cases. The only "conflict" between the cases cited by the Union Trustees, and the decision of the Eleventh Circuit herein, arises because the application of the standards enunciated in those cases to the facts and circumstances involved in this case dictated a different result.

The standard used by the Eleventh Circuit in this action to resolve the dispute between the parties as to whether Section 302(c)(5)(B) required arbitration of the Requested Pension Increase was whether or not that issue was "an administrative matter or an extraordinary matter." 927 F.2d at 548 (App. to Petition of A-6a). This, in essence, is the same broad standard applied in the cases cited by the Union Trustees in determining whether Section 302(c)(5)(B) mandates arbitration of a particular issue. Other courts have also applied this standard in deciding questions of arbitrability under Section 302(c)(5)(B). See, e.g. Ader v. Hughes, 570 F.2d 303 (10th Cir. 1978); Enix v. Burrell, 572 F.Supp. 1364 (S.D. Ohio 1983). In short, none of the courts

that have considered the arbitration provision of Section 302(c)(5)(B) have done so in a vacuum. Rather, they have interpreted the mandate of Section 302(c)(5)(B) in light of the terms and conditions of the plan involved, and the intent of the parties to the plan.

In order to determine whether the Requested Pension Increase was an administrative matter subject to arbitration pursuant to Section 302(c)(5)(B), or an extraordinary matter for which that section does not mandate arbitration, the Eleventh Circuit looked to (1) the terms of the Plan and (2) the collective bargaining relationship out of which the Plan arose. The Eleventh Circuit deemed several provisions of the Plan significant in this regard. First, the court noted that Article Six, Section 6.01 of the Plan "establishes a fixed schedule of benefits." 927 F.2d at 548 (App. to Petition at A-6a). The court then cited Article Six, Section 6.05 of the Plan, which "expressly outlines the procedure for changing the level of benefits, stating that a change, either upward or downward, 'shall be made through an amendment to [the] Plan.'" Id. (App. to Article Four-

teen, Petition at A-6a-7a). Finally, the Eleventh Circuit noted that Section 14.01 provides that "an amendment to the Plan requires approval of seventy-five percent of the Trustees." Id. (App. to Petition at A-7a).

With regard to the collective bargaining relationship between the parties to the Plan, the Eleventh Circuit noted that the provisions of the Plan discussed above were the product of the collective bargaining process. Id. at 549 (App. to Petition at A-7a). The Eleventh Circuit held that the parties to the Plan, by allowing myriad matters that may come before the Board of Trustees to be approved on a simple majority vote, but requiring that other matters, such as changes in benefits, be approved by a seventy-five percent (75%) majority of the Board of Trustees, manifested their intent to treat changes in benefits as extraordinary or "special" matters. Id. (App. to Petition of A-7a).

Based on the foregoing facts, the Eleventh Circuit held that the Requested Pension Increase was, with

regard to this Plan, an extraordinary matter and not subject to arbitration. Id. (App. to Petition at A-7a). The foregoing facts, the Eleventh Circuit noted, also clearly distinguish the decision in this case from the cases cited by the Union Trustees. Id. at 548 (App. to Petition at A-6a). The Eleventh Circuit even stated that "[i]t may be that, in the absence of plan language to the contrary, changes in benefits should ordinarily be treated as an administrative matter." Id. at 548 (App. to Petition at A-7a-8a).

Notwithstanding the Union Trustees assertions to the contrary, there is no conflict between the decision of the Eleventh Circuit and the decisions of other circuits in the cases cited by the Union Trustees. The Eleventh Circuit applied the same legal standards in this action as were applied by the courts in the cases cited by the Union Trustees, and the courts in other cases as well. The difference in this case and those cited by the Union Trustees lies in the result reached, which was based on the particular facts and circumstances present in this case. As the Eleventh Circuit

noted, these facts and circumstances distinguish this case from those cited by the Union Trustees. Since there is no conflict between the Eleventh Circuit's decision herein, and the cases from other circuits cited by the Union Trustees, review by this Court is not warranted.

Applicable Law Affords the Union Trustees a More Appropriate Remedy in the Circumstances Presented by this Action.

The Union Trustees suggest to this Court that the decision of the Eleventh Circuit herein would prevent any resolution by the Board of Trustees of matters that come before them where there is a tie vote by the Trustees. The Union Trustees assert that this result is contrary to the intent of Congress in enacting Section 302(c)(5)(B) that "deadlocks" in the "administration" of a plan be resolved through arbitration.

The decision of the Eleventh Circuit does not lead to the result suggested by the Union Trustees. Under the Plan, matters which require only a majority

vote of the Board of Trustees are undoubtedly subject to the arbitration provision of the Plan which is mandated by Section 302(c)(5)(B). These are matters of Plan administration within the meaning of that Section. However, matters which require an amendment to the Plan, and therefore a seventy-five percent (75%) favorable vote by the Board of Trustees, are not subject to the Plan's arbitration provision. These matters, as the Eleventh Circuit held, are outside the scope of the arbitration provision based on the express terms of the Plan, and, because they are extraordinary matters rather than matters of administration, Section 302(c)(5)(B) does not mandate that they be submitted to arbitration. However, this does not mean that extraordinary matters such as the Requested Pension Increase will not be resolved.

Section 6.05 of the Plan provides that the Trustees may adjust the level of benefits paid under the Plan "whenever it finds that the financial situation of the Fund permits such action." Section 404(a)(1)(A) of

ERISA, 29 U.S.C. § 1104(a)(1)(A)[5] requires that the Trustees "discharge [their] duties with respect to [the Plan] solely in the interest of the participants and beneficiaries . . . for the exclusive purpose of providing benefits to the participants and their beneficiaries." If the financial situation of the fund at any particular time dictated that benefits should be increased, and one faction of the Board of Trustees refused to act to effectuate the appropriate increase, such refusal would be a breach of the duties imposed on the Trustees as fiduciaries by Section 404 of ERISA. Faced with such a breach of fiduciary duty, any Trustee would be able to bring an action seeking to remedy the failure to raise benefit levels to the level dictated by the financial

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[5]Section 404(a)(1)(A) provides, in relevant part, as follows:

> 404. Fiduciary duties.
>
> (a) Prudent man standard of care
>
> (1) . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries . . .

condition of the Plan. This is the device which prevents a freeze on benefit levels by the Employer Trustees that the Union Trustees apparently fear will occur should the Employer Trustees prevail here.

ERISA, through Section 404(a)(1)(A), obviates the concerns expressed by the Union Trustees that, absent the requirement that the Requested Pension Increase be submitted to arbitration, the Employer Trustees could prevent the benefits under the Plan from ever being increased. Furthermore, the remedy available to the Trustees under ERISA is a more appropriate remedy in this situation, and is certainly preferable to requiring the Requested Pension Increase to be submitted to arbitration in contravention of the clear intent of the parties evidenced by the unambiguous terms of the Plan.

CONCLUSION

For the foregoing reasons, the Union Trustees' Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit is due to be denied.

Respectfully submitted,

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